

IN The United States District Court
For The District Of Delaware

James W. Riley,
v. Plaintiff,
Stanley Taylor, et al.,
Defendants

C.A. No. 06-001-GMS

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2006 AUG -1 PM 2:59

Plaintiff's Motion For Summary
Judgment In Response To Defendants'
Malaney's And Correctional Medical
Systems (Services CMS) Motion To Dismiss

Herein Come The Plaintiff James Riley who move For
immediate Summary Judgment pursuant to Rule 56(c) of the
Fed. R. Civ. P. against all defendants. The Preliminary Injunction
(P.I.) and Temporary Restraining Order (TRO) and Supporting Sworn
Affidavit plaintiff Filed dated July 9, 2006, is designated AS
"Plaintiff's Memorandum Of Law In support Of Motion For Summary
Judgment"; AS well AS an original request For P.I./TRO
respectfully. In Further support For Summary judgment, plaintiff
states the Following:

I. Defendants' Exhaustion Of Administrative
Remedies Defense For Failure To Treat
Plaintiff's Rectum Dysfunction Lack Merit

1. In defendant Malaney/CMS' motion To Dismiss they
incorrectly STATED AT paragraphs 7 Thru 13 that plaintiff

Failed to exhaust All Administrative remedies regarding his complaints about the rectum dysfunction. First the defendants did not respond with candor and purposely failed to provide the court with a complete copy of the medical records pertaining to this issue. The medical record show that from 9/24/02 to 10/24/02 plaintiff was given a laxative type pill and hemorrhoidal cream medications for the rectum dysfunction. (See Exhibit 4 pg. 25 To Defendants' Motion To Dismiss hereafter "Ex. 4").

However the defendants did not include the records relating to the initial sick call complaint filed by plaintiff and whether or not any physical examinations were conducted by the doctor who prescribed this medication. It is plaintiff's contention no physical examination were ever conducted to diagnose the problem prior to prescribing any medication. Also the defendants did not provide the court with the two Grievance Complaints and letter written to Warden Carroll by plaintiff in 2002 and 2003. (See Exhibits A-1 Thru A-3 Attached To Plaintiff's P.I/TRD). These Complaints were all ignored!!

The Grievance complaint the defendants refer to in paragraph 12 of their motion to dismiss relate to the Grievance about the Footwear issue (NOT the rectum dysfunction issue) wherein a resolution was agreed upon, that the Footwear has been placed on order and that plaintiff would "sign off" on not pursuing the Grievance any further. (See Grievance Attached To P.I/TRD Exhibit A-4 Thru A-7). However to this date plaintiff has not been provided with this Footwear that was placed on order in August of 2005.

In All, As The defendants' incomplete medical records show, plaintiff went through several years of ineffective administrative remedies, from 2002 to 2005. (See P.I/TRO Exhibits, in particular see Exhibit A-26, 27 A Letter From Attorney Stephen A. Hampton regarding The inadequate Grievance remedy).

Thus The Exhaustion of Administrative remedies Toll The two year of statute of Limitation period. See Ray v. Kertes, 285 F.3d 287 (3rd Cir.2002).

II. Defendants' Defense For Denial Of Medical Treatment For Necrotizing Fasciitis Infection; Denial Of Eyeglasses And Orthopedics Footwear Is Totally Devoid Of Any Truthfulness

2. AT paragraph 16 OF Defendants' motion To Dismiss They state That plaintiff was seen by medical on March 24, 2005 For The rash on his Face. Although plaintiff deny That medical seen him on March 24, 2005, however They did see him on the other two dates referred to, For The Facial rash, As the medical records indicates in Exhibit-4 pages 1 And 5 OF defendants' motion To dismiss. However plaintiff was never seen or examined by a qualified doctor For Necrotizing Fasciitis (Flesh eating bacteria) in sick call complaint Filed on April 10, 2005. (See Exhibit 4 pg. 3 & 4 To defendants' motion To Dismiss). The defendants' medical records show That no qualified doctor ever

examine plaintiff For Necrotizing Fasciitis infection. Instead The medical Supervisor, defendants Munson and Malaney, delegated This responsibility To non-qualified nursing STAFF who simply back dated A notation reference on plaintiff's sick call complaints or merely state they had seen plaintiff. (see Exhibit-4 pages 1 Thru 6 To Defendants' Motion To Dismiss And Exhibits A-11, A-15 and A-19 To Plaintiff's P.I./TRO Memos To defendants Munson and Malaney).

Defendants Further state AT par. 16 That plaintiff was provided with special Footwear on November 12, 2003, in which plaintiff does NOT make issue of in his civil action complaint. The issue is That plaintiff is entitled To new Footwear once a year. The Footwear That was approved by doctor's Orders in 2004 and 2005 was never provided; and The defendants' offer no proof That The, "Additional Footwear [] ordered For him in 2005," was ever provided per orders of The doctor; nor does defendants dispute plaintiff's denial of This Footwear. (see Doctor's Orders For Top Boots Exhibit-4 pgs. 8 & 9 To Defendants' Motion To Dismiss And Medical Grievance Exhibit A-5 To Plaintiff's P.I./TRO, where Sneakers ordered but never provided). However To This date plaintiff have not been provided any such Orthopedic Footwear.

Furthermore, The defendants states AT par. 16 falsely, That There are no indications in The medical records of any need For eyeglasses. To The contrary see same doctor's Order Exhibit-4 pg. 9 which state:

" OPTH. Consult. - (R) eye 20/200 "
 (eye doctor) - (L) eye 20/30

(Note: "OPTh." is short for Ophthalmology specialist). This Court shall sanction the defendants for making misleading arguments and intentionally distorting material facts to gain an unfair advantage.

Lastly, the defendants' argument at par. 16 about plaintiff's request for vitamins for his past history of anemia have no relationship to the issues in this case.

But since defendants mention the matter as an indirect indication that plaintiff is making bogus medical complaints, however see Exhibit-4 pg. 2 - a letter plaintiff wrote to medical for the vitamins based upon a 2002 sick call complaint (Exhibit-4 pg. 24) where a doctor (Dr. Roy Decker) indicated verbally that plaintiff may possibly be anemic. (Defendants' medical Records Exhibit 4). See also attached hereto plaintiff's medical record from Bee Bee Hospital which indicate a history of nutritional anemia). Therefore this evidence refutes defendants' subtle notion that plaintiff's complaints are baseless.

III. Plaintiff Is Entitled To Summary Judgment Where No Genuine Dispute To Any Material Fact Exist

3. In reviewing a grant of summary judgment the facts must be viewed in the light

most Favorable To The non-moving party. See Smith v. Mensinger, 293 F.3d 641, 647 (3d Cir. 2002). Summary judgment is appropriate, as here, only if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *Id.* Thus, a motion to dismiss under Fed. R. Civ. P. 12(b)(6), on the other hand, should not be granted unless it appears that the plaintiff can prove no set of facts that would entitle him or her to relief. *Id.* As it obviously appears, the defendants are not entitled to a motion to dismiss and their request for dismissal must therefore be denied.

However, on the other hand plaintiff's request for summary judgment should be granted as a matter of law for the following reasons and contentions above:

(i) The defendants did not dispute (par. "(J)" of plaintiff's Civil Action Complaint) that one prisoner, Japhis Lampkins, whom plaintiff was housed with in Building 23 of the Maximum Housing Unit (MHU), was hospitalized for necrotizing fasciitis infection and had to have surgery. (See Sunday's October 9, 2005 Wilmington Delaware News Journal paper article regarding inmate Lampkins' ordeal). Plaintiff possibly contracted this infection from inmate Lampkins while confined with him in building 23 on the same tier, (He and I are close friends). Inmate Lampkins and plaintiff

Filed complaints with same medical personnel around the same time, beginning as early as March 2005. Only after inmate Lampkins infection got so bad and the exposure of the problem by the News Journal did the Delaware Correctional Center's (DCC) medical staff defendants provide him treatment, in September 2005, nearly seven (7) months after his initial complaints.

(ii) The defendants are unable to provide any sworn affidavits from qualified doctors who may have seen or conducted physical examinations, tests, or any diagnosis regarding plaintiff's exposure to necrotizing fasciitis and the approximate cause of plaintiff's rectum dysfunction, because no doctor ever performed any examinations and that issue is not disputed by defendants. (See Plaintiff's Complaint par. (a) thru (c) and (j) thru (m)).

(iii) The defendants can produce sworn affidavits from qualified doctors whom seen and examine plaintiff's eyes and foot problems, but such affidavits will not be favorable to defendants and will not dispute the contentions at par. (d) thru (i) of plaintiff's civil action complaint that he was denied footwear and eyeglasses (an ophthalmology examination) per orders of qualified doctor.

(iv) The defendants continue to deny plaintiff any medical treatment as prescribed by the doctors for his serious medical needs despite the fact of their knowledge of plaintiff's complaints herein. Instead the defendants present misleading and distorted

Arguments in an attempt to justify their continued willful wanton, callous reckless disregard for plaintiff's serious medical needs which constitute deliberate indifference. "A medical need is 'serious' if it (as here) has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." See Henderson v. Harris, 672 F. Supp. 1054, 1059 (N.D. Ill. 1987) (inadequate medical treatment for rectum dysfunction) and Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (intentionally interfering with the treatment once prescribed or intentionally denying or delaying a care).

None of defendant's disputes are viable as to any material facts to permit this case to proceed any further or to delay final judgment and relief in plaintiff's favor as requested in his original civil action complaint.

Wherefore, for the good cause shown herein above and that stated in supporting P.I/TRD motion with supporting affidavit designate as supporting memorandum of law hereto, plaintiff's motion for summary judgment pursuant to Rule 56(c) should be granted as requested as a matter of law.

Date: July 26, 2006

James W. Riley

James W. Riley, pro se

Delaware Correctional Center

1181 Paddock Road

8 Smyrna, Delaware 19977

FEDERAL BUREAU OF INVESTIGATION - WASHINGTON, D.C. 20535-7000

64242

NAME: Riley, James Wm First James Middle Wm Hospital No. 75020 ✓

Location in Hospital: # 007 Clinic or Service: Pub Med Attending Physician: Dr. Paine

Address: 406 Leaves, Dela City Leaves State Del Zone 1 Phone Albert Scott

Age 5 mos Date of Birth Aug 14, 1960 Birthplace Leaves, Dela Hospital Social Security No. Albert Scott

Sex M Color of Hair Blk Color of Eyes Brn Religion P. d. Med Occupation

Name of Father Living or Dead Name of Mother Living or Dead

Next of Kin Riley, Gladys Address Relationship Mother

Date of Admission 1-11-61 AM 1-21-61 PM 4:30

Hospitalization Insurance Not NY Contract No.

Final Diagnosis Pneumonia - RCL
Nutritional anemia

CODE NUMBER 6

Complications

Operation

Result: Recovered ☒ Improved ☐ Unimproved ☐ Not Treated ☐ Died ☐ Released Against Advice ☐

Date 1-31-61 Signature of Attending Physician Carl B. [Signature]

Certificate of Service

I, James R. Iley, hereby certify that I have served a true
and correct cop(ies) of the attached: MOTION For Summary
Judgment upon the following
parties/person (s):

TO: Kevin J. Connors, Esp TO: _____
1220 N. MARKET ST., 5TH FL. _____
P. O. Box 8888 _____
Wilmington, Delaware _____
19899-8888 _____
(ATT. For. deFTs. Munson & Manaway) _____

TO: Ophelia M. Waters, Esp. TO: _____
Deputy Attorney General _____
820 N. French St. _____
Wilmington, Delaware _____
19801 _____
(ATT. For. deFTs. Taylor, Carroll & Pierce) _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United
States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE
19977.

On this 30 day of July, 2006

James R. Iley

IM James Riley

SBI# 169716 UNIT MH4, Bldg 21

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE

**U.S.M.S.
X-RAY**



Office of The Clerk

United States District Court

844 King Street

Wilmington, Delaware

19801